

with a common treasury or community treasury where members include a portion of the taxable income of the association or corporation on their federal tax return. Additionally, pursuant to section 1(3)(i), a member of an entity subject to this fee is exempt from the community engagement activities.

By subjecting one group of people that are members of a religious or apostolic association with a fee while not imposing a fee on other organizations, section 10 of LC1251 may raise potential constitutional conformity issues with respect to the Equal Protection requirements of Article II, section 4, of the Montana Constitution, as well as the Equal Protection requirements of the Fourteenth Amendment of the United States Constitution. There is also a similar potential constitutional conformity issue with granting members of one religious organization an exemption from the community engagement requirement without providing the same benefit to other individuals of another organization.

Article II, section 4, of the Montana Constitution provides:

The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws. Neither the state nor any person, firm, corporation, or institution shall discriminate against any person in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political *or religious ideas*. (emphasis added).

In *Montana Department of Revenue v. Barron*, 245 Mont. 100, 799 P.2d 533 (1990), the Supreme Court determined that a property tax statute that caused certain similarly situated taxpayers to bear a disproportionate share of Montana's tax burden violated the Equal Protection requirements of the Fourteenth Amendment of the United States Constitution, and Art. II, § 4, 1972 Montana Constitution. *Id.* at 111. Imposing a fee on one religious entity while also providing a benefit to the same entity is arguably more significant. Moreover, since the differential treatment is based on religious status, it is likely the Supreme Court would apply a higher level of review than rational basis. See *Butte Cmty. Union v. Lewis*, 219 Mont. 426, 712 P.2d 1309 (1986)¹.

Consequently, section 10 of LC1251 as drafted may raise potential constitutional conformity issues with the Equal Protection requirements of Article II, section 4, of the Montana Constitution.

Requester Comments:

Superseded on other grounds as recognized in *Zempel v. Uninsured Employers' Fund*, 282 Mont. 424, 938 P.2d 658 (1997), and *Wadsworth v. State*, 275 Mont. 287, 911 P.2d 1165 (1996).